

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

-----X	
MARYAM QURESHI, on behalf of herself :	
and others similarly situated, :	Case No.: 2:14-cv-01806-CCC-MF
Plaintiff, :	
v. :	<u>THIRD-PARTY COMPLAINT</u>
OPS 9, LLC and ANURAG SETT, :	
Defendants. :	
----- :	
OPS 9, LLC and ANURAG SETT, :	
Third-Party Plaintiffs, :	
v. :	
FALONI & ASSOCIATES, LLC, :	
Third-Party Defendant. :	
----- X	

OPS 9, LLC AND ANURAG SETT'S THIRD-PARTY COMPLAINT

OPS 9, LLC. ("OPS 9") and Anurag Sett, Defendants and Third-Party Plaintiffs in the above-referenced action, and file this Third-Party Complaint against Third-Party Defendant Faloni & Associates, LLC. ("Faloni & Associates" or "Faloni") as follows:

NATURE OF ACTION

1. Faloni is a law firm. OPS 9 hired Faloni to sue Maryam Qureshi to collect an unpaid account. In addition to its fiduciary duties to OPS, Faloni owed contractual duties to OPS 9. Specifically, Faloni entered into a written contract with OPS 9 which contained an

indemnification clause requiring Faloni to defend and indemnify OPS 9 under certain circumstances. Those circumstances exist here. Specifically, the contract requires Faloni to: "...hold OPS 9 harmless against liability, loss, or damage...which may result from any aspects of commission or omission by Faloni...or by reason of any matter...arising out of the performance of services..."

2. The contract also required Faloni to: "... comply with all applicable laws, orders, and rulings of Federal, State, and Local Governments and all agencies thereof including the FDCPA."

3. Pursuant to Fed. R. Civ. P. 14(a), OPS 9 and Anurag Sett, as third-party plaintiffs, bring this third-party complaint against Faloni & Associates, LLC to protect and secure their indemnification rights under the Collection Agreement (hereinafter sometimes referred to as the "contract"). To the extent that OPS 9 and/or Anurag Sett are found liable for the acts or omissions of Faloni or otherwise incurs costs in defending claims based upon Faloni's acts or omissions, Faloni is contractually required to indemnify OPS 9 and Anurag Sett for any liabilities or costs incurred in this action.

PARTIES, JURISDICTION AND VENUE

4. Defendant and Third-Party Plaintiff, OPS 9, LLC ("OPS 9") is a Georgia limited liability company with its principal place of business in Atlanta, Georgia, which retained the law firm of Faloni & Associates, LLC, to collect accounts and debts on its behalf in the state of New Jersey.

5. Defendant and Third-Party Plaintiff, Anurag Sett is a natural person residing in the state of Georgia and is the President and Managing Member of OPS 9, LLC.

6. Third-Party Defendant Faloni & Associates, LLC (“Faloni”) is a New Jersey limited liability company and law firm doing business in the District of New Jersey that may be served at its business address located at 165 Passaic Avenue, Suite 301B, Fairfield, New Jersey 07004.

7. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332 based on diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) as it is the judicial district where a substantial part of the events relevant to this action occurred.

FACTS

9. OPS 9, LLC, retained the law firm of Faloni & Associates, LLC, to collect unpaid accounts and debts placed with it on OPS 9’s behalf.

10. At all times relevant herein, Faloni & Associates, LLC and David A. Faloni, Jr., represented OPS 9 and served as its attorney.

11. At all times relevant herein, Anurag Sett was the President and Managing Member of OPS 9, LLC.

12. On May 23, 2012, OPS 9 and Faloni & Associates entered into a Collection Agreement (also referred to herein as the “contract”) whereby, *inter alia*, Faloni promised to comply with all federal, state, and local laws, including the FDCPA, in connection with its attempts to collect those accounts and debts placed with it by OPS 9.

13. On May 23, 2012, OPS 9 and Faloni & Associates entered into a contract whereby, *inter alia*, Faloni promised to indemnify, hold harmless, and defend OPS 9 against any

liabilities, loss, damages, or expense if any claims were to be brought against it which it is alleged that Faloni violated any federal, state, or local law, including the FDCPA.

14. Faloni also promised to indemnify, hold harmless, and defend OPS 9 against any liability, loss, or damage OPS 9 may incur arising out of the performance of collection services on OPS 9's behalf by Faloni & Associates.

15. On or about February 6, 2014, Plaintiff filed her Original Complaint against OPS 9, LLC and Anurag Sett in the Superior Court of New Jersey alleging violations of the FDCPA as the result of alleged violations of New Jersey state court rules in the filing of default judgments by Faloni on OPS 9's behalf.

16. On March 21, 2014, OPS 9 and Anurag Sett removed Plaintiff's Complaint to this Court on the basis of federal question jurisdiction by virtue of Plaintiff's FDCPA claim.

17. Plaintiff alleges that OPS 9 violated the FDCPA due to the content of an application for default judgment filed on OPS 9's behalf by Faloni & Associates.

18. Plaintiff alleges that the application for default judgment, filed on OPS 9's behalf by Faloni Associates, failed to comply in numerous respects with the New Jersey state court rules and thus, violated the FDCPA.

19. Faloni & Associates, as OPS 9's collection counsel, was responsible for ensuring that the both the handling of OPS 9's collection accounts and the filing of documents with any court followed the law and all applicable court rules.

COUNT I: INDEMNIFICATION

20. The allegations contained in all preceding paragraphs are incorporated by reference and re-alleged as if fully repeated herein.

21. As set forth above, Faloni & Associates, LLC has agreed to indemnify, hold harmless, and defend OPS 9, LLC.

22. Faloni & Associates, LLC's agreement to indemnify, hold harmless, and defend OPS 9 extends to its President and Managing Member, Anurag Sett.

23. Faloni & Associates, LLC is liable to OPS 9, LLC and Anurag Sett for any and all liabilities, loss, damage or expense, including but not limited to attorney's fees and court costs, which OPS 9 and Anurag Sett may incur as the result of the commencement of these proceedings.

24. OPS 9 and Anurag Sett have demanded indemnification and defense by Faloni & Associates by written correspondence.

25. Faloni & Associates has failed and refused to indemnify and defend and has not acknowledged its indemnification and defense obligations to OPS 9 and Anurag Sett.

COUNT II: BREACH OF CONTRACT

26. The allegations contained in all preceding paragraphs are incorporated by reference and re-alleged as if fully repeated herein.

27. As per the terms of the contract between the parties, Faloni & Associates agreed that in connection with its collection efforts on behalf of OPS 9, it would comply with all applicable laws, orders, and rulings of Federal, State, and Local Governments and all agencies thereof including the FDCPA.

28. If OPS 9 and/or Anurag Sett are liable to Ms. Qureshi then Faloni & Associates is liable to OPS 9 and/or Anurag Sett for breaching the contract between the parties for violating the law.

29. As a result of said breach, OPS 9, LLC and Anurag Sett have suffered and continue to suffer monetary damages.

COUNT III: BREACH OF FIDUCIARY DUTY

30. The allegations contained in all preceding paragraphs are incorporated by reference and re-alleged as if fully repeated herein.

31. By reason of Faloni & Associates' position as counsel for OPS 9, LLC, Faloni & Associates owed a fiduciary duty to its client, OPS 9, LLC.

32. This fiduciary duty extends to OPS 9, LLC's President and Managing Member, Anurag Sett.

33. Faloni & Associates owed a duty to OPS 9 and Anurag Sett to comply with all local, state, and federal laws in the discharge of its duties. Ms. Qureshi alleges that OPS 9 and Anurag Sett violated various local, state, and federal laws in the filing of the collection action and application for default judgment against her. If OPS 9 and/or Anurag Sett violated these laws as alleged by Ms. Qureshi, then Faloni & Associates is liable to OPS 9 and/or Anurag Sett in the discharge of its duties.

34. As a result of this breach, OPS 9, LLC and Anurag Sett have suffered and continue to suffer monetary damages.

COUNT IV: NEGLIGENCE

35. The allegations contained in all preceding paragraphs are incorporated by reference and re-alleged as if fully repeated herein.

36. As set forth herein, the actions of Faloni & Associates, LLC constitute negligence, if OPS 9 and/or Anurag Sett is liable to Ms. Qureshi.

37. As the direct and proximate cause of the negligent acts Faloni & Associates, OPS 9, LLC and Anurag Sett have suffered damages in an amount to be proven at trial.

COUNT V: CONTRIBUTION

38. The allegations contained in all preceding paragraphs are incorporated by reference and re-alleged as if fully repeated herein.

39. Faloni & Associates, LLC agreed to hold OPS 9, LLC harmless from any losses and expenses.

40. The agreement to hold OPS 9, LLC harmless from any losses and expenses extends to OPS 9's President and Managing Member, Anurag Sett.

41. If OPS 9, LLC is found liable to Plaintiff and/or any purported class member, then Faloni & Associates is liable to OPS 9, LLC for any such liability, plus attorney's fees, court costs, and costs of litigation.

42. If Anurag Sett is found liable to Plaintiff and/or any purported class member, then Faloni & Associates is liable to Anurag Sett for any such liability, plus attorney's fees, court costs, and costs of litigation.

43. If OPS 9, LLC is found liable to Plaintiff and/or any purported class member, then OPS 9 is entitled to contribution from Faloni & Associates as provided in the Collection Agreement and/or as provided by law.

44. If Anurag Sett is found liable to Plaintiff and/or any purported class member, then Anurag Sett is entitled to contribution from Faloni & Associates as provide in the Collection Agreement and/or as provided by law.

WHEREFORE, Third-Party Plaintiffs respectfully request:

- a) that the Court enter judgment against Faloni & Associates, LLC., on all counts of this Complaint, with appropriate interest;
- b) that OPS 9, LLC. and Anurag Sett have a trial by jury;
- c) that reasonable attorney's fees, court costs, and fees be taxed to Faloni & Associates, LLC.; and
- d) that OPS 9, LLC. and Anurag Sett be awarded such other and further relief as this Court deems just and proper.

Dated: April 10, 2014

THE SALVO LAW FIRM, PC

By: /s/ Cindy D. Salvo
CINDY D. SALVO

185 Fairfield Ave, Suite 3C/3D
West Caldwell, New Jersey 07006
(973) 226-2220
(973) 900-8800 (fax)

BEDARD LAW GROUP, P.C.
Michael K. Chapman, Esq.
2810 Peachtree Industrial Blvd., Suite D
Duluth, Georgia 30097
(678) 253-1871 ext. 202
(678) 253-1873 (fax)
mchapman@bedardlawgroup.com

Attorneys for Defendants and Third-
Party Plaintiffs,
OPS 9, LLC. and Anurag Sett

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2014, a copy of the foregoing pleading was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system. I hereby certify that a copy of this pleading will be facsimile transmission, electronic mail, and/or United States mail, properly addressed, and postage prepaid, to any non CM/ECF participants.

Dated: April 10, 2014

THE SALVO LAW FIRM, PC

By: /s/ Cindy D. Salvo
CINDY D. SALVO

185 Fairfield Ave, Suite 3C/3D
West Caldwell, New Jersey 07006
(973) 226-2220
(973) 900-8800 (fax)

Attorneys for Defendants and Third-
Party Plaintiffs,
OPS 9, LLC. and Anurag Sett